

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 653 of 2000

in

SPECIAL CIVIL APPLICATION No 9522 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL PARESHKUMAR HIMATLAL

Versus

PATEL PASHABHAI MAGANDAS

Appearance:

MR SV PARMAR for Appellants

MS SEJAL K MANDAVIA for Respondent No. 1

RULE SERVED BY DS for Respondent No. 7, 9,10

MR MAYANK VORA for Respondent No. 8

CORAM : MR.JUSTICE J.M.PANCHAL

and

Date of decision: 23/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By means of filing this appeal under clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated October 11, 2000, rendered by the learned Single Judge in Special Civil Application No. 9522/2000 by which order dated August 31, 2000 rendered by the Government of Gujarat quashing order dated August 7, 2000 made by the Additional Registrar (Appeals), Co-operative Societies, Gujarat State, is upheld.

2. The appellants are members of Chiloda Seva Sahakari Mandli Limited, which is a primary society. Bye-law No.34 framed by the society provided that the managing committee would consist of 5 or 7 or 9 members as was to be determined at the annual general meeting of the society and election of the members of the managing committee was to be held by secrete ballot papers. The society has also framed election rules. Rule 4.1 of the Rules provided that one third of the members of the managing committee would retire every year and election was to be held to fill in those vacancies. Rule 5.2 of the Rules, inter-alia, provides that any member, who is qualified, can contest election for being elected as member of the managing committee. Rule 6.3 provided that a member of the society is entitled to cast as many votes as number of vacancies. The annual general meeting of the society was held on September 25, 1994 and amendment in Bye-law no.34 had been carried out. According to amended rule, the strength of managing committee is increased to 11 members. It is further provided that tenure of members of the managing committee would be for a period of 3 years and thereafter elections should take place by secrete ballot system. Further the amendment stipulates that one seat is reserved for a member who belongs to scheduled caste and another one seat is reserved for a landless member of the society; whereas five seats are reserved for members who are small farmers and four seats are reserved for members who are big farmers. The voting pattern has been changed and by the amendment it is provided that a candidate belonging to scheduled caste can contest only on the seat reserved for scheduled caste member and can be elected only by votes of members belonging to scheduled caste. Similarly, it is provided that landless member can contest election only on the seat reserved for the said member and he can

be elected only by the votes of the members who are landless. Separate voting lists are also accordingly prepared. Thus, what is carved out by the amendment is classwise constituencies and voting rights are also restricted classwise.

3. It may be stated that at the time of passing of the resolution dated September 25, 1994, members belonging to scheduled caste had demanded that they should be permitted to cast vote in favour of other candidate also. That was rejected.

4. The resolution passed was submitted before the Assistant Registrar, Co-operative Societies for registering it as provided by section 13(2) of the Gujarat Co-operative Societies Act, 1961 ("the Act" for short). The Assistant Registrar accordingly registered the amendment by an order dated January 9, 1995. After amendment of Bye-law 34, elections for the members of the managing committee of the society took place in the year 1997. The term of the managing committee, which was elected in the year 1997, was to be over in the year 2000 and, therefore, notification dated July 26, 2000 was issued for holding elections on 13.8.2000. The present appellants have preferred Appeal No.95/2000 under section 153(1) of the Act before the Registrar challenging order dated January 9, 1995 passed by the Assistant Registrar registering the amendment. During the pendency of appeal, the appellate authority had granted stay against enforcement of the order which was passed by the Assistant Registrar. Thereupon, respondents no.1 to 6 had filed revision application before the State Government under section 155 of the Act. The revisional authority had stayed operation of order of the appellate authority and, therefore, the present appellants had approached High Court by way of filing Special Civil Application No. 9012/2000. The learned Single Judge of this Court refused to entertain the petition, as revision was pending before the State Government. After the order of the High Court in Special Civil Application No. 9012/2000, the revision filed by respondents no. 1 to 6 was taken-up for hearing and allowed by an order dated August 31, 2000. Feeling aggrieved by the said order, the appellants preferred Special Civil Application No. 9522/2000. The learned Single Judge has dismissed the petition holding that it is not maintainable. That order is challenged by the appellants in the present appeal.

5. From the facts, which are narrated above, it is evident that the appeal filed by the appellants before the Registrar under section 153(1) of the Act is pending

and is not disposed of on merits. Subject matter of petition, in which judgment impugned is rendered, was interim relief which was granted by the revisional authority. As the appellants have already resorted to alternative remedy available under section 153(1) of the Act, we are of the view that it is not necessary for us to decide the questions which are raised in the present appeal and the points which are sought to be raised by the learned counsel for the appellants can very well be raised before the appellate authority for its consideration. The learned counsel for the appellants expressed an apprehension that the observations made by the revisional authority and the learned Single Judge of the High Court in the course of orders in question might create prejudice. In JAIKISHAN JAGWANI AND OTHERS v. BRITOMATICS ENTERPRISES PVT.LTD. AND OTHERS, 1987 (Supp) SCC 72, similar apprehension was expressed before the Supreme Court and the same was negatived by making following pertinent observations :

"We think that the apprehension is not well founded because by the very nature of things such observations are tentative observations made for the limited purposes of the interlocutory proceedings. When the question of deciding the matter on merits ultimately arises, the matter would ofcourse be disposed of with an open mind uninfluenced or uninhibited by any observations made in the course of these orders, on the basis of the evidence on record and in the light of submissions then made in accordance with law."

Again, in P.GOVINDASWAMY AND ANOTHER v. S. NARAYANA AND OTHERS, 1987 (Supp) SCC 58, the Supreme Court has observed as under in para-5 of the reported judgment :-

"We do not consider it necessary to reiterate that the views expressed in the course of the judgment in the interlocutory proceedings are tentative by the very nature of things. The matter will doubtless be disposed of finally in accordance with law on the basis of the material placed before the court in the light of the submissions advanced by the parties uninhibited one way or the other by what has been said whilst disposing of the interlocutory applications. We may also clarify that it will be open to the High Court to proceed further with the main company matter in accordance with law."

6. In view of the principles enunciated by the Supreme Court in the above-referred to decisions, we are of the opinion that the apprehension expressed by the learned counsel for the appellants that the observations made by the revisional authority and the High Court in course of the orders in question would create prejudice, has no basis. It is clarified that by the very nature of things such observations are tentative observations made for the limited purposes of interlocutory proceedings. When the question of deciding the matter on merits ultimately arises before the appellate authority, the matter would of course be disposed of with an open mind uninfluenced and uninhibited by any observations made in the course of revisional order or the order passed by the High Court in Special Civil Application No. 9522/2000, on the basis of evidence on record and in the light of submissions then made in accordance with law. We may state that Appeal No.95/2000 filed by the appellants is pending before the Additional Registrar (Appeals), Co-operative Societies, State of Gujarat, Gandhinagar. Having regard to the facts of the case, we are of the view that interest of justice would be served if the direction is given to the appellate authority to dispose of the appeal as early as possible and preferably within the time which may be stipulated in this order.

Therefore, Additional Registrar (Appeals), Co-operative Societies, State of Gujarat, Gandhinagar before whom Appeal No. 95/2000 is pending, is directed to dispose of the appeal as early as possible and preferably within two months from the date of receipt of the writ, on merits and in accordance with law without being influenced or inhibited by observations made in the order of the revisional authority or High Court. During the course of hearing of this appeal, it transpired that the appellants have also filed Lavad Suit No.748/2000, which is pending before the Board of Nominee, wherein notification dated July 26, 2000 for holding elections on August 13, 2000 is challenged and stay is granted in favour of the present appellants. It would be open to the contesting respondents to move the Board of Nominee for expeditious hearing of the said suit.

Subject to foregoing observations and directions, the appeal fails and is dismissed with no order as to costs.

(J.M.Panchal,J.)

(A.M.Kapadia,J.)